



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

JOHN A. LASOTA, JR.
ATTORNEY GENERAL

November 29, 1978

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Mr. Jack King, Assistant Director
Division of Property & Special Taxes
Department of Revenue
Capitol Wing
Phoenix, Arizona

Re: I78-273 (R78-280)

Dear Mr. King:

In your letter of September 19, 1978, you inquired what sanctions were available if the Affidavit of Value required by A.R.S. § 42-1612.A was not completed. You also requested clarification on what information would still be required from the parties to a transaction when the transaction falls within one of the categories exempted by A.R.S. § 42-1614.

The purpose of § 42-1612 is to provide a source of current market data for the Department of Revenue and the county assessors to use in valuing the property within the State at current market value. The terms of the statute are mandatory. A.R.S. § 42-1612.A currently provides:

Each deed evidencing a transfer of title and any contract relating to the sale of real property shall at the time of recording have appended thereto an affidavit of the seller and the purchaser to the transaction, or their legal representatives, in a form as prescribed by the department, declaring the value, name and address of the seller and purchaser, legal description, and book, map, and parcel number of the property transferred. (Emphasis added)

The plain and unambiguous language of a statute governs its interpretation and application. City of Mesa v. Killingsworth, 96 Ariz. 290, 394 P.2d 410 (1965). Without any further provision in the statute, we would conclude that the plain meaning of the mandatory language of the statute created a condition precedent to the recordation of any document falling within the provisions of A.R.S. § 42-1612.A and not excepted by A.R.S. § 42-1614. Otherwise, the lack of effective sanctions would frustrate the statute's purpose of providing the Department with a source of current market data. Indeed, that was our conclusion in our earlier opinion on this question, Atty.Gen.Op. 68-4, which was issued when A.R.S. § 42-1612 contained no specific sanctions for failures to file an affidavit.

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After the issuance of that opinion, the Legislature amended the provisions pertaining to the affidavits of value. The most significant changes occurred in Ch. 149, Laws of 1970, wherein the Legislature amended § 42-1612 by adding subsection D. as follows:

The county recorder shall transmit to the department on a monthly basis a list of all instruments recorded by him not having an affidavit of value appended to it which should have had an affidavit appended. Such list shall specify the grantee, grantor, date of recording and the docket and page of the recording. (Emphasis added)

During the same legislative session, the criminal sanctions imposed by A.R.S. § 42-1612.B. were amended by adding to the penalty for falsifying an affidavit a penalty for failing to file an affidavit. Both are misdemeanors.

These two changes in the enforcement provisions must be given effect. Needel v. Needel, 15 Ariz. App. 471, 489 P.2d 729 (1971). It is apparent from the language of the 1970 amendments that a county recorder may record a document without the required affidavit. The county recorder is required to inform the Department of those instruments which should have had the affidavit attached. Those persons who failed to attach the affidavit are guilty of a misdemeanor, and the Department of Revenue may request that such persons be prosecuted. The Department of Revenue may investigate such matters under its investigatory powers set forth in A.R.S. §§ 42-123.01.B.1 and 42-1602.

Additional changes to A.R.S. § 42-1612 were made during the last legislative session. Ch. 181, Laws of 1978. Those amendments, which substantially rewrite A.R.S. § 42-1612, become effective from and after December 31, 1978. For your reference, a copy of those provisions are attached.

As amended by Ch. 181, Laws of 1978, A.R.S. § 42-1612.A specifies in greater detail the information required in the affidavit. § 42-1612.B retains the misdemeanor provisions, but changes them to conform to the new criminal code. § 42-1612.C provides:

The county recorder shall examine the affidavit upon submission to his office and shall refuse to record any deed and any contract relating to the sale of real property after December 31, 1978 if such affidavit has not been completed pursuant to subsection A of this section, unless exempt pursuant to § 42-1614.

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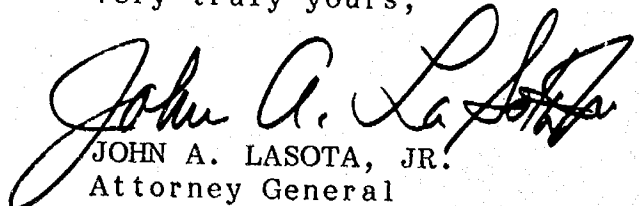
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Therefore, upon the effective date of Ch. 181, Laws of 1978, the present investigatory and criminal sanctions will be supplemented by the prohibition against recording documents without the required Affidavit of Value. Until that time, however, a county recorder is only required to notify the Department of non-compliance with the affidavit requirement.

A.R.S. § 42-1614 exempts certain types of transactions from the requirements of both the fee and the affidavit. When originally adopted, certain categories were exempted from the affidavit while certain others were exempted from the fee. All of the exemptions now contained in A.R.S. § 42-1614 are exemptions from both affidavit and fee. This change occurred during the 1970 legislative session. Therefore, if a transaction falls within any of the exemptions listed in A.R.S. § 42-1614, the Affidavit of Value is not required. However, pursuant to A.R.S. § 42-1614.C, the instrument to be recorded must contain a notation of the exemption claimed. The Department of Revenue may, of course, investigate such claims of exemption for their accuracy.

The mere fact that a transaction is exempt from the Affidavit of Value requirement does not, however, preclude the Department and county assessors from obtaining pertinent valuation information from taxpayers pursuant to the separate investigatory powers found in A.R.S. §§ 42-111.05, 42-123.01.A.7. and 42-222. The exemptions in A.R.S. § 42-1614 merely exempt transactions from the affidavit and fee requirements. A.R.S. § 42-1614 does not excuse the taxpayer from providing information to the Department of Revenue or to county assessors property sought under their separate information gathering powers.

Very truly yours,


JOHN A. LASOTA, JR.
Attorney General

JAL/mm

Enclosures